

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANDY SWINSON,

Plaintiff,

-v.-

CITY OF NEW YORK; ASSISTANT
DEPUTY WARDEN ELYN RIVERA,
Shield No. 576; SECURITY CAPTAIN
JOHN HERNANDEZ, Shield No. 1806;
DR. DEBRA MAYERS; PHYSICIAN'S
ASSISTANT (PA) IRA GORNISH; DR.
TERESA CUADRA; PA HESTER
MOULTON; PA BESSIE FLORES-
CLEMENTE; DR. JUSTIN WILSON; PA
LAURA HUNT; DR. CAROLYN DICKIE;
CORRECTIONAL HEALTH SERVICES,

Defendants.

19 Civ. 11919 (KPF)

ORDER OF SERVICE

KATHERINE POLK FAILLA, District Judge:

Plaintiff, currently detained in the Manhattan Detention Center (MDC), brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his federal constitutional rights. By order dated January 23, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").¹

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C.

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

§ 1915(d) (“The officers of the court shall issue and serve all process ... in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m).”).

A. Claims Against New York City Department of Correction Employees

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that the City of New York; Assistant Deputy Warden Elyn Rivera, Shield No. 576; and Security Captain John Hernandez, Shield No. 1806, waive service of summons.

B. Medical Staff

To allow Plaintiff to effect service on Defendants Physician's Assistant (PA) Ira Gornish; Dr. Teresa Cuadra; PA Hester Moulton; PA Bessie Flores-Clemente; Dr. Justin Wilson; PA Laura Hunt; Dr. Carolyn Dickie; and Correctional Health Services through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants.² The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail a copy of this Order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to issues summonses, complete the USM-285 forms with the addresses for Physician's Assistant (PA) Ira Gornish; Dr. Teresa Cuadra; PA Hester Moulton; PA Bessie Flores-Clemente; Dr. Justin Wilson; PA Laura Hunt; Dr. Carolyn Dickie; and Correctional Health

² According to a New York Health + Hospitals Corp. representative, Dr. Debra Mayers is on military leave until February 2021, and H+H cannot accept service on her behalf until she returns. Additionally, under the Servicemembers' Civil Relief Act, 50 U.S.C. § 3901 *et seq.*, Dr. Mayers may be entitled to a stay of any proceedings against her. The Court will revisit this issue at a later stage.

Services, and deliver to the U.S. Marshals Service all documents necessary to effect service.

The Clerk of Court is directed to electronically notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that Defendants City of New York; Assistant Deputy Warden Elyn Rivera, Shield No. 576; and Security Captain John Hernandez, Shield No. 1806 waive service of summons.

SO ORDERED.

Dated: February 3, 2020
New York, New York



KATHERINE POLK FAILLA
United States District Judge

A copy of this Order was mailed by Chambers to:

Randy Swinson
ID#3491202608
Manhattan Detention Center
125 White Street
New York, NY 10007

DEFENDANTS AND SERVICE ADDRESSES

1. Dr. Carolyn Dickie
c/o Marcella Lowe, Assistant Director of Medical Records
New York City Health + Hospitals
125 Worth Street
New York, NY 10013
2. Correctional Health Services
New York City Health + Hospitals
125 Worth Street
New York, NY 10013
3. PA Ira Gornish
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, New York 11105
4. Dr. Theresa Cuadra
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, New York 11105
5. PA Hester Moulton
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, New York 11105
6. PA Bessie Flores-Clemente
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, New York 11105
7. Dr. Justin Wilson
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, New York 11105

8. PA Laura Hunt
c/o Gwendolyn Renee Tarver
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, New York 11105